

1 **BEFORE THE ARIZONA MEDICAL BOARD**

2
3 In the Matter of

4 **MICHAEL MAHL, M.D.**

5 Holder of License No. 12868
6 For the Practice of Allopathic Medicine
In the State of Arizona.

Case Nos. MD-08-0840A
MD-08-1427A

**CONSENT AGREEMENT FOR
LICENSE REACTIVATION, LETTER OF
REPRIMAND AND PROBATION**

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8 **CONSENT AGREEMENT**

9 By mutual agreement and understanding, between the Arizona Medical Board
10 ("Board") and Michael Mahl, M.D. ("Respondent"), the parties agree to the following
11 disposition of this matter.

12 1. Respondent has read and understands this Consent Agreement and the
13 stipulated Findings of Fact, Conclusions of Law and Order ("Consent Agreement").
14 Respondent acknowledges that he has the right to consult with legal counsel regarding
15 this matter.

16 2. By entering into this Consent Agreement, Respondent voluntarily
17 relinquishes any rights to a hearing or judicial review in state or federal court on the
18 matters alleged, or to challenge this Consent Agreement in its entirety as issued by the
19 Board, and waives any other cause of action related thereto or arising from said Consent
20 Agreement.

21 3. This Consent Agreement is not effective until approved by the Board and
22 signed by its Executive Director.

23 4. The Board may adopt this Consent Agreement or any part thereof. This
24 Consent Agreement, or any part thereof, may be considered in any future disciplinary
25 action against Respondent.

1 5. This Consent Agreement does not constitute a dismissal or resolution of
2 other matters currently pending before the Board, if any, and does not constitute any
3 waiver, express or implied, of the Board's statutory authority or jurisdiction regarding any
4 other pending or future investigation, action or proceeding. The acceptance of this
5 Consent Agreement does not preclude any other agency, subdivision or officer of this
6 State from instituting other civil or criminal proceedings with respect to the conduct that is
7 the subject of this Consent Agreement.

8 6. All admissions made by Respondent are solely for final disposition of this
9 matter and any subsequent related administrative proceedings or civil litigation involving
10 the Board and Respondent. Therefore, said admissions by Respondent are not intended
11 or made for any other use, such as in the context of another state or federal government
12 regulatory agency proceeding, civil or criminal court proceeding, in the State of Arizona or
13 any other state or federal court.

14 7. Upon signing this agreement, and returning this document (or a copy
15 thereof) to the Board's Executive Director, Respondent may not revoke the acceptance of
16 the Consent Agreement. Respondent may not make any modifications to the document.
17 Any modifications to this original document are ineffective and void unless mutually
18 approved by the parties.

19 8. If the Board does not adopt this Consent Agreement, Respondent will not
20 assert as a defense that the Board's consideration of this Consent Agreement constitutes
21 bias, prejudice, prejudgment or other similar defense.

22 9. This Consent Agreement, once approved and signed, is a public record that
23 will be publicly disseminated as a formal action of the Board and will be reported to the
24 National Practitioner Data Bank and to the Arizona Medical Board's website.

1 10. If any part of the Consent Agreement is later declared void or otherwise
2 unenforceable, the remainder of the Consent Agreement in its entirety shall remain in
3 force and effect.

4 11. Any violation of this Consent Agreement constitutes unprofessional conduct
5 and may result in disciplinary action. A.R.S. § § 32-1401(27)(r) (“[v]iolating a formal order,
6 probation, consent agreement or stipulation issued or entered into by the board or its
7 executive director under this chapter”) and 32-1451.

8 12. ***Respondent has read and understands the conditions of probation.***

9
10 Michael Mahl M.D.

DATED: 4/27/09

11 MICHAEL MAHL, M.D.
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FINDINGS OF FACT

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2 1. The Board is the duly constituted authority for the regulation and control of
3 the practice of allopathic medicine in the State of Arizona.

4 2. Respondent is the holder of license number 12868 for the practice of
5 allopathic medicine in the State of Arizona.

6 3. The Board initiated case number MD-08-0840A after receiving a complaint
7 regarding Respondent's care and treatment of a twenty-three year-old female patient
8 ("JR"). Subsequently, patients JR, DH, and KS' records were reviewed.

9 4. Patient JR was seen by Respondent in May 2008 for substance abuse and
10 psychiatric evaluation. Respondent gave JR prescriptions for Seroquel and buprenorphine.
11 Respondent scheduled a one week follow up appointment; however, JR did not show and
12 subsequently died of an overdose five weeks later. JR did not overdose on the
13 medications prescribed by Respondent.

14 5. Patient DH presented to Respondent in August 2007 for opioid dependence,
15 depression and a history of binge drinking. Respondent prescribed buprenorphine for
16 withdrawal symptoms and Seroquel for sleep. During the course of treatment, DH missed
17 appointments, reported an opioid relapse and an overdose of Soma and Flexeril.
18 Respondent continued to prescribe buprenorphine and in May, 2008, prescribed
19 benzodiazapines despite Respondent's knowledge of DH's use of other sedating drugs in
20 the past.

21 6. Patient KS was seen by Respondent from August 2007 through February
22 2008 for opioid dependence. During the course of treatment, Respondent prescribed
23 Lunesta, but later changed to Ambien. Lexapro, Provigil, Xanax and Skelaxin were also
24 prescribed during the course of treatment. There was no documented diagnosis for
25 prescribing the Lexapro and Provigil. On February 14, 2008, KS was transported to the

1 emergency department in cardiac arrest and later died of a drug overdose of Soma and
2 buprenorphine. Respondent never prescribed Soma to KS.

3 7. The standard of care requires a physician to follow the proper protocol for
4 buprenorphine induction in patients with opioid dependence and to exercise caution in
5 prescribing multiple sedative drugs in combination with buprenorphine.

6 8. Respondent deviated from the standard of care because he did not follow
7 the proper protocol for buprenorphine induction in patients JR, DH, and KS and he
8 prescribed two sedating drugs to DH and KS while prescribing buprenorphine.

9 9. Prescribing Valium and Seroquel to a patient who has a prior history of
10 overdosing on sedatives and who has missed three follow up visits in eleven months has
11 the potential for excessive and dangerous sedation in combination with buprenorphine if
12 the medications are not taken as prescribed. There is a risk of overdose and death if
13 benzodiazepines, sedatives, tranquilizers or alcohol are taken simultaneously with
14 buprenorphine, which increases the risk if there is intravenous self administration of
15 benzodiazepines. Respondent was not aware of any history of intravenous drug use in
16 JR, DH or KS.

17 10. A physician is required to maintain adequate legible medical records
18 containing, at a minimum, sufficient information to identify the patient, support the
19 diagnosis, justify the treatment, accurately document the results, indicate advice and
20 cautionary warnings provided to the patient and provide sufficient information for another
21 practitioner to assume continuity of the patient's care at any point in the course of
22 treatment. A.R.S. § 32-1401(2). Respondent's records were inadequate because there
23 was no documented diagnosis for prescribing medications to KS.

24 11. Subsequently, the Board initiated case number MD-08-1427A after receiving
25 Respondent's request for reactivation of his Arizona License. Respondent successfully

1 completed the Board's Monitored Aftercare Program (MAP) on August 9, 2007. On July
2 18, 2008, the Board's Addiction Medicine Consultant received a patient complaint that
3 Respondent was late for appointments, visibly impaired with slurred speech at work and
4 stated to a patient that he was on Xanax for anxiety. Subsequently, Respondent met with
5 the Board's Addiction Medicine Consultant and underwent urine and hair testing. The hair
6 test was positive for Cannabinoids. Respondent states that he took two Marinol tablets in
7 June, 2008, while on vacation. On July 29, 2008, Respondent signed a Consent
8 Agreement for Inactivation with Cause, but he did not admit to a relapse.

9 12. On August 4 - 7, 2008, Respondent underwent a substance abuse
10 evaluation. The evaluation facility recommended that Respondent initiate a treatment
11 process that addresses his relapse and other issues that may arise. It was also
12 recommended that Respondent enter intensive residential treatment. On September 16,
13 2008, Respondent entered residential treatment and during treatment, Respondent
14 admitted to relapsing. On October 14, 2008, Respondent successfully completed
15 treatment and was discharged with a recommendation that he reached his treatment goals
16 and that he may return to practice.

17 13. On November 26, 2008, Respondent requested reactivation of his Arizona
18 medical license. The Board's Addiction Medicine Consultant reviewed Respondent's
19 treatment records, found that Respondent was not ready to practice medicine at this time
20 and required further treatment. On December 16, 2008, Board Staff reviewed this case
21 and recommended that Respondent undergo further treatment and/or undergo a chemical
22 dependency evaluation within 30 days and abide by the facility's recommendations.

23 14. On February 4, 2009, Respondent entered treatment and successfully
24 completed treatment on March 6, 2009 with a diagnosis of polysubstance abuse. On
25

March 10, 2009, Respondent entered into an Interim Consent Agreement to participate in MAP.

15. Board staff recommends that Respondent's license be reactivated and he be placed in MAP under a final Board Order.

CONCLUSIONS OF LAW

1. The Arizona Medical Board possesses jurisdiction over the subject matter hereof and over Respondent.

2. The Board has received substantial evidence supporting the Findings of Fact described above and said findings require the Board to either refer the matter for formal hearing to revoke Respondent's license or reactivate Respondent's license and place Respondent on probation for five years with restrictions necessary to assure public safety. A.R.S. § 32-1452(F).

3. Additionally, the conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1401(27)(e) ("[f]ailing or refusing to maintain adequate records on a patient."), A.R.S. §32-1401(27)(f) ("[h]abitual intemperance in the use of alcohol or habitual substance abuse.") and A.R.S. § 32-1401(27)(q) ("[a]ny conduct or practice that is or might be harmful or dangerous to the health of the patient or the public.").

ORDER

IT IS HEREBY ORDERED that:

1. Respondent's license is reactivated upon payment of the renewal fee.
2. Respondent is issued a Letter of Reprimand.
3. Respondent is placed on Probation for **five years** with the following terms and conditions:
 - a. Continuing Medical Education

Respondent shall **within six months** of the effective date of this Order obtain **15 - 20 hours** of Board Staff pre-approved Category I Continuing Medical Education (CME) in **prescribing controlled substances** and provide Board Staff with satisfactory proof of attendance. The CME hours shall be in addition to the hours required for the biennial renewal of medical license.

b. Chart Reviews

Respondent shall employ Affiliated Monitors to conduct quarterly chart reviews and report results to the Board. Respondent shall pay the expenses of all chart reviews and fully cooperate with any requests made by Affiliated Monitors in conducting the chart reviews. This requirement may be terminated after **two years** if Respondent is in compliance and the results of the reviews are acceptable.

c. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all conditions of probation. The declarations shall be submitted on or before the 15th of March, June, September and December of each year, beginning on or before September, 2009.

d.1. Participation¹. Respondent shall promptly enroll in and participate in the Board's program for the treatment and rehabilitation of physicians who are impaired by alcohol or drug abuse ("MAP"). Respondent's participation in MAP may be unilaterally terminated with or without cause at the Board's discretion at any time after the issuance of this Order.

2. Relapse Prevention Group. Respondent shall attend MAP's relapse prevention group therapy sessions one time per week for the duration of this Order, unless

¹ Respondent's MAP participation is retroactive to March 11, 2009 and shall end on March 10, 2014.

excused by the MAP relapse prevention group facilitator for good cause such as illness or vacation. Respondent shall instruct the MAP relapse prevention group facilitators to release to Board Staff, upon request, all records relating to Respondent's treatment, and to submit monthly reports to Board Staff regarding attendance and progress. The reports shall be submitted on or before the 10th day of each month.

3. **12 Step or Self-Help Group Meetings.** Respondent shall attend ninety 12-step meetings or other self-help group meetings appropriate for substance abuse and approved by Board Staff, for a period of ninety days beginning not later than either (a) the first day following Respondent's discharge from chemical dependency treatment or (b) the date of this Order.

4. Following completion of the ninety meetings in ninety days, Respondent shall participate in a 12-step recovery program or other self-help program appropriate for substance abuse as recommended by the MAP Director and approved by Board Staff. Respondent shall attend a minimum of three 12-step or other self-help program meetings per week for a total of twelve per month. Two of the twelve meetings must be Caduceus meetings. Respondent must maintain a log of all self-help meetings. Board Staff will provide the log to Respondent.

5. **Board-Staff Approved Primary Care Physician.** Respondent shall promptly obtain a primary care physician and shall submit the name of the physician to Board Staff in writing for approval. The Board-approved primary care physician ("PCP") shall be in charge of providing and coordinating Respondent's medical care and treatment. Except in an *Emergency*, Respondent shall obtain medical care and treatment only from the PCP and from health care providers to whom the PCP refers Respondent. Respondent shall request that the PCP document all referrals in the medical record. Respondent shall promptly inform the PCP of Respondent's rehabilitation efforts and

1 provide a copy of this Order the PCP. Respondent shall also inform all other health care
2 providers who provide medical care or treatment that Respondent is participating in MAP.

3 a. *"Emergency"* means a serious accident or sudden illness that, if not
4 treated immediately, may result in a long-term medical problem or loss of life.

5 6. **Medication.** Except in an *Emergency*, Respondent shall take no
6 *Medication* unless the PCP or other health care provider to whom the PCP refers
7 Respondent prescribes the *Medication*. Respondent shall not self-prescribe any
8 *Medication*.

9 a. *"Medication"* means a prescription-only drug, controlled substance,
10 and over-the counter preparation, other than plain aspirin, plain ibuprofen,
11 and plain acetaminophen.

12 7. If a controlled substance is prescribed, dispensed, or is administered
13 to Respondent by any person other than PCP, Respondent shall notify the PCP in writing
14 within 48 hours and notify the MAP Director immediately. The notification shall contain all
15 information required for the medication log entry specified in paragraph 8. Respondent
16 shall request that the notification be made a part of the medical record. This paragraph
17 does not authorize Respondent to take any *Medication* other than in accordance with
18 paragraph 6.

19 8. **Medication Log.** Respondent shall maintain a current legible log of
20 all *Medication* taken by or administered to Respondent, and shall make the log available to
21 the Board Staff upon request. For *Medication* (other than controlled substances) taken on
22 an on-going basis, Respondent may comply with this paragraph by logging the first and
23 last administration of the *Medication* and all changes in dosage or frequency. The log, at
24 a minimum, shall include the following:

25 a. Name and dosage of *Medication* taken or administered;

- b. Date taken or administered;
- c. Name of prescribing or administering physician;
- d. Reason *Medication* was prescribed or administered.

This paragraph does not authorize Respondent to take any *Medication* other than in accordance with paragraph 6.

9. No Alcohol or Poppy Seeds. Respondent shall not consume alcohol or any food or other substance containing poppy seeds or alcohol.

10. Biological Fluid Collection. During all times that Respondent is physically present in the State of Arizona and such other times as Board Staff may direct, Respondent shall promptly comply with requests from Board Staff or MAP Director to submit to witnessed biological fluid collection. If Respondent is directed to contact an automated telephone message system to determine when to provide a specimen, Respondent shall do so within the hours specified by Board Staff. For the purposes of this paragraph, in the case of an in-person request, "promptly comply" means "immediately." In the case of a telephonic request, "promptly comply" means that, except for good cause shown, Respondent shall appear and submit to specimen collection not later than two hours after telephonic notice to appear is given. The Board in its sole discretion shall determine good cause.

11. Respondent shall provide Board Staff in writing with one telephone number that shall be used to contact Respondent on a 24 hour per day/seven day per week basis to submit to biological fluid collection. For the purposes of this section, telephonic notice shall be deemed given at the time a message to appear is left at the contact telephone number provided by Respondent. Respondent authorizes any person or organization conducting tests on the collected samples to provide testing results to the Board and the MAP Director.

1 **12.** Respondent shall cooperate with collection site personnel regarding
2 biological fluid collection. Repeated complaints from collection site personnel regarding
3 Respondent's lack of cooperation regarding collection may be grounds for termination
4 from MAP.

5 **13. Out of State Travel and/or Unavailability at Home or Office**
6 **Telephone Number.** Respondent shall provide Board Staff at least three business
7 days advance written notice of any plans to be away from office or home when such
8 absence would prohibit Respondent from responding to an order to provide a biological
9 fluid specimen or from responding to communications from the Board. The notice shall
10 state the reason for the intended absence from home or office, and shall provide a
11 telephone number that may be used to contact Respondent.

12 **14. Payment for Services.** Respondent shall pay for all costs,
13 including personnel and contractor costs, associated with participating in MAP at
14 time service is rendered, or within 30 days of each invoice sent to Respondent.

15 **15. Examination.** Respondent shall submit to mental, physical, and
16 medical competency examinations at such times and under such conditions as directed by
17 the Board to assist the Board in monitoring Respondent's ability to safely perform as a
18 physician and Respondent's compliance with the terms of this Order.

19 **16. Treatment.** Respondent shall submit to all medical, substance
20 abuse, and mental health care and treatment ordered by the Board.

21 **17. Obey All Laws.** Respondent shall obey all federal, state and local
22 laws, and all rules governing the practice of medicine in the State of Arizona.

23 **18. Interviews.** Respondent shall appear in person before the Board and
24 its Staff and MAP committees for interviews upon request, upon reasonable notice.

25 **19. Address and Phone Changes, Notice.** Respondent shall

1 immediately notify the Board in writing of any change in office or home addresses and
2 telephone numbers.

3 **20. Relapse, Violation.** In the event of chemical dependency relapse by
4 Respondent or Respondent's use of drugs or alcohol in violation of the Order,
5 Respondent's license shall be **REVOKED**. In the alternative, Respondent may
6 **SURRENDER HIS LICENSE** if he agrees in writing to being impaired by alcohol or drug
7 abuse. A.R.S. § 32-1452(G).

8 **21. Notice Requirements.**

9 **(A)** Respondent shall immediately provide a copy of this Order to all
10 employers and all hospitals and free standing surgery centers where Respondent currently
11 has privileges. Within 30 days of the date of this Order, Respondent shall provide the
12 Board with a signed statement of compliance with this notification requirement. Upon any
13 change in employer or upon the granting of privileges at additional hospitals and free
14 standing surgery centers, Respondent shall provide the employer, hospital or free standing
15 surgery center with a copy of this Order. Within 30 days of a change in employer or upon
16 the granting of privileges at additional hospitals and free standing surgery centers,
17 Respondent shall provide the Board with a signed statement of compliance with this
18 notification requirement.

19 **(B)** Respondent is further required to notify, in writing, all employers,
20 hospitals and free standing surgery centers where Respondent currently has or in the
21 future gains employment or privileges, of a chemical dependency relapse, use of drugs or
22 alcohol in violation of this Order and/or entry into a treatment program. Within seven days
23 of any of these events Respondent shall provide the Board written confirmation of
24 compliance with this notification requirement.

25 **22. Public Record.** This Order is a public record.

1 **23. Out-of-State.** In the event Respondent resides or practices as a physician
2 in a state other than Arizona, Respondent shall participate in the rehabilitation program
3 sponsored by that state's medical licensing authority or medical society. Respondent shall
4 cause the monitoring state's program to provide written reports to the Board regarding
5 Respondent's attendance, participation, and monitoring. The reports shall be due
6 quarterly on or before the 15th day of March, June, September, and December of each
7 year, until the Board terminates this requirement in writing. The monitoring state's
8 program and Respondent shall immediately notify the Board if Respondent: a) is non-
9 compliant with any aspect of the monitoring requirements; b) relapses; c) tests positive for
10 controlled substances; d) has low specific gravity urine drug test(s), missed and/or late
11 urine drug tests, or otherwise rejected urine drug tests; and e) is required to undergo any
12 additional treatment.

13 **24.** This Order supersedes all previous consent agreements and
14 stipulations between the Board and/or the Executive Director and Respondent.

15 **25.** The Board retains jurisdiction and may initiate new action based upon
16 any violation of this Order.

17 **26.** Respondent shall immediately obtain a treating psychiatrist and
18 psychotherapist approved by Board Staff and shall remain in treatment with the
19 psychiatrist and psychotherapist until further order of the Executive Director. Respondent
20 shall comply with the psychiatrist and psychotherapist's recommendations for continuing
21 care and treatment. Respondent shall instruct the psychiatrist and psychotherapist to
22 release to Board Staff, upon request, all records relating to Respondent's treatment, and
23 to submit quarterly written reports to Board Staff regarding diagnosis, prognosis,
24 medications, and recommendations for continuing care and treatment of Respondent. The
25 reports shall be submitted on or before the 15th day of March, June, September and

1 December of each year, beginning on or before September, 2009. Respondent shall
2 provide the psychiatrist and psychotherapist with a copy of this order. Respondent shall
3 pay the expenses of all psychological and psychotherapy care and be responsible for the
4 preparation for the quarterly reports. After **twelve months**, Respondent may submit a
5 written request to the Executive Director requesting termination of the requirement that
6 Respondent remain in treatment with a psychiatrist and psychotherapist. The decision to
7 terminate will be based, in part, upon the treating psychiatrist and psychotherapist's
8 recommendation for continued care and treatment.

9 e. Respondent shall pay the costs of the administrative hearing scheduled for
10 April 27 and 28, 2009, in an amount not to exceed \$2,000.

11 f. This Order is the final disposition of case numbers MD-08-1427A and MD-
12 08-0840A.

13 DATED AND EFFECTIVE this 9th day of June, 2009.

14
15 (SEAL)

ARIZONA MEDICAL BOARD

16
17 By Amade Rich
18 for Lisa S. Wynn
Executive Director

19 ORIGINAL of the foregoing filed
this 9th day of June, 2009 with:

20 Arizona Medical Board
21 9545 E. Doubletree Ranch Road
Scottsdale, AZ 85258

22 EXECUTED COPY of the foregoing mailed
23 this 9th day of June, 2009 to:

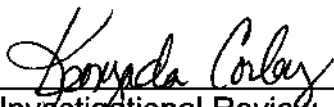
24 Charles E. Buri
Charles E. Buri, P.L.C.
25 4742 N. 24th Street, Suite A-150

1 Phoenix, Arizona 85016-9139

2 EXECUTED COPY of the foregoing mailed
3 this 9th day of June, 2009 to:

4 Michael Mahl, M.D.

5 Address of Record

6 

7 Investigational Review

8 #450529